

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA * **CRIMINAL NO. 11-027**

V. * SECTION: “B”

KENDRICK DAVID WILKERSON *

* * *

FACTUAL BASIS

If this case were to proceed to trial, the government would prove that the defendant, **KENDRICK DAVID WILKERSON (WILKERSON)**, is guilty beyond a reasonable doubt of count one (1) of the Indictment, which charges **WILKERSON** with a violation of the Federal Gun Control Act under Title 18, United States Code, Sections 922 (g)(1) and 924 (a)(2). The government would establish through credible and competent witnesses and evidence the following facts:

On Tuesday, May 25, 2010, at approximately 2:30 p.m., New Orleans Police Department (NOPD) 4th District Det. Gina Cousin, while manning unit 1421, was conducting surveillance of 1918 Pace Blvd., New Orleans, Louisiana, to ensure that no contraband could be possibly removed from the residence while waiting for the arrival of a search warrant requested by NOPD Det.

Jonathan Hirdes¹. While conducting surveillance, Det. Cousin observed an unknown black male, later identified as **WILKERSON**, drive up and park in the driveway of 1916 Pace St. in a silver Pontiac Aztek. 1916 Pace Blvd. and 1918 Pace Blvd. are two units within a single townhouse. Det. Cousin, who had a clear and unobstructed view, observed **WILKERSON** as he then exited the vehicle and entered the townhouse. A short time later, Det. Cousin observed **WILKERSON** exiting the residence. Believing that **WILKERSON** was about to leave, possibly in possession of illegal contraband, Det. Cousin radioed what she observed to other NOPD units in the area so they could detain the suspect and secure the residence. NOPD Lt. Gary Marchese and other units immediately responded to the residence. Lt. Marchese, with assistance from the other units, then detained **WILKERSON** for questioning.

While standing near the front driver's side window, Lt. Marchese observed in plain view an Intratec, TEC-9, 9mm pistol, with an obliterated serial number and an extended magazine, resting in between the driver's seat and the front passenger's seat. A subsequent check revealed that **WILKERSON** had been previously convicted of aggravated assault with a firearm on a police officer in 2004.² **WILKERSON** was then arrested by NOPD Det. Quincy Jones for being a felon

¹ On May 25, 2010, Charles Larvinette (Larvinette) was seen leaving 1918 Pace Blvd. mid-morning with a firearm in a vehicle by NOPD officers. Larvinette was a known convicted felon and so the NOPD decided to pull over the car while it was proceeding on the West Bank expressway. After being ordered to exit the car, Larvinette jumped off the elevated portion of the West Bank expressway to avoid capture. In doing so, Larvinette dropped a gun. He was subsequently arrested and while he was being processed, NOPD applied for a search warrant for 1918 Pace Blvd., New Orleans, Louisiana, to look for other firearms.

² In fact, **WILKERSON** has been thrice convicted for felonies that qualify as predicate offenses: On October 30, 2007, he was convicted for Aggravated Assault Upon a Peace Officer

in possession of a firearm.

After being advised of his constitutional rights, Det. Jones asked **WILKERSON** if the Pontiac Aztek was his vehicle. **WILKERSON** stated, “I don’t know who it’s for. It ain’t mine. I was just standing out here waiting for my ride.” Det. Jones then advised **WILKERSON** that he was observed by Det. Cousin pulling up to the residence in the vehicle, getting out and then entering the residence at 1918 Pace St. **WILKERSON** then replied, “Not me! Man, I don’t know who that car for!” Det. Jones then asked **WILKERSON** if the gun that was observed in the vehicle by the Lt. Marchese was his and **WILKERSON** replied, “Man, I don’t know nothing about no gun.” Det. Jones requested a crime scene tech to the scene to collect the evidence and take photos. After **WILKERSON** was arrested, Det. Jones retrieved a cell phone from **WILKERSON** and began to search it incident to the arrest. Inside the cell phone, he found a photographic image of **WILKERSON** holding what appeared to be two firearms. In his right hand, the defendant appeared to be holding a TEC 9 type weapon that closely resembled the one that was in the Pontiac Aztek. A computer forensics expert with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) would confirm that the photograph in question was taken on May 18, 2010.

The Intratec TEC-9 pistol was discovered to be fully loaded, with one live round in the chamber, and 28 rounds in the extended magazine. It was also determined by the NOPD that the

with a Firearm in violation of La.- R.S. 14:37.2, Orleans Parish Criminal District Court, Case No. 454491; on the same date, he was convicted of Possession of Cocaine in violation of La.- R.S. 40:967(C), Orleans Parish Criminal District Court, Case No. 458525 [concurrent sentences]; and on March 6, 2008, he was convicted of Possession of a Controlled Substance, 208th District Court, Houston, Texas, Case No. 105645501010.

serial number had been obliterated.

While processing the scene, Det. Jones was approached by **WILKERSON's** sister, Jaquan Massey, who identified herself as the owner of the Pontiac Aztek. Ms. Massey stated that on Tuesday, May 25, 2010, at approximately 8:00 a.m., **WILKERSON**, who was residing with her at 2108 Mesa Via Street, Harvey, Louisiana, asked her to use her vehicle in order to go and find a job. Ms. Massey further stated that she agreed and gave **WILKERSON** the keys to the vehicle. At about 3:00 p.m. that day, Ms. Massey was called by a relative and was advised that her brother was under arrest and that she needed to come by and pick up her vehicle. Det. Jones asked Ms. Massey if she owned a firearm and she replied, "Hell no!" Det. Jones then asked Ms. Massey if she knew who owned the firearm that was observed in her vehicle at which time she replied, "No." Det. Jones further asked Ms. Massey if there were any firearms in her vehicle when she loaned it to **WILKERSON**, to which she replied, "No." Det. Jones released the vehicle to Ms. Massey and advised her that she was free to leave the scene.

Certified records would establish that **WILKERSON** has been thrice convicted for felonies that qualify as predicate offenses as described in the Indictment: on October 30, 2007, he was convicted for Aggravated Assault Upon a Peace Officer with a Firearm in violation of La.- R.S. 14:37.2, Orleans Parish Criminal District Court, Case No. 454491 and sentenced to 14 months; on the same date, he was convicted of Possession of Cocaine in violation of La.-R.S. 40:967(C), Orleans Parish Criminal District Court, Case No. 458525 and sentenced to 12 months [concurrent sentences]; and on March 6, 2008, he was convicted of Possession of a Controlled Substance, 208th District Court, Houston, Texas, Case No. 105645501010 and sentenced to 3 years.

The ATF has also confirmed that **WILKERSON** has not received a pardon for the Louisiana convictions nor have his civil rights been restored. An expert with the ATF successfully test fired the Intratec TEC-9, 9mm pistol and it meets the federal legal definition of a “firearm” set forth in Title 18, United States Code, Section 921(a)(3).

According to ATF Special Agent Marlin Ford, the Intratec TEC-9, 9mm pistol in question was not manufactured in the state of Louisiana, therefore, it has affected interstate commerce by being found in this state.

APPROVED AND ACCEPTED:

KENDRICK DAVID WILKERSON Date
Defendant

LIONEL “LON” BURNS Date
Attorney for Defendant

EDWARD J. RIVERA Date
Attorney for the United States of America